In The

Supreme Court of the United States

October Term, 1977

No. 77-1783

AMERICAN NATIONAL BANK,

Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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The Petitioner, American National Bank (a Virginia corporation) respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on April 18, 1978.

I.
OPINIONS BELOW

The final opinion and order of the District Court for the Eastern District of Virginia (App. A of Petition) is re-

ported at 420 F.Supp. 181. The opinion of the United States Court of Appeals for the Fourth Circuit (App. B of Petition) is not yet reported.

II.
JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on April 18, 1978. This petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

III.
QUESTIONS PRESENTED

1. Whether a suit brought under Title VII of the Civil Rights Act of 1964 is subject to dismissal where the EEOC's unconscionable delay of six and a half years has severely prejudiced the Defendant.

2. Whether the EEOC can commence an action in federal court when its own delay of six and a half years makes it impossible for it to prove essential jurisdictional facts.

IV.
STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions, 42 U.S.C. § 2000e-5(b), 2000e-5(e), 2000e-(f)(1), 2000e-6(a), 2000e-6(c) and 2000-6(e) are set out in Appendix C.

V.
STATEMENT OF THE CASE

This action arises from a single charge of alleged employment discrimination filed by Sandra Holland, a black female, on June 19, 1969. In her charge Ms. Holland alleged that she applied for a job at American National Bank's Suffolk, Virginia, office and that she was not hired because of her race. On March 31, 1970, the Bank was served with a copy of the charge and the charge was investigated by the EEOC. Almost four years later, March 11, 1974, the EEOC issued its administrative determination finding "reasonable cause." Conciliation between the Bank and the EEOC was unsuccessful. On August 22, 1974, the same day it advised the Bank that conciliation had failed, the EEOC informed Ms. Holland that she could file a lawsuit in Federal District Court. (App. 17,2). Ms. Holland elected not to sue the Bank concerning her charge of discrimination.

On January 21, 1976, almost a year and a half after Ms. Holland declined to sue, the EEOC filed this action in the District Court at Norfolk, Virginia, under Section 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1). In response to the Bank's interrogatories requesting that the EEOC identify every person allegedly discriminated against, the EEOC on March 29, 1976, identified *one* person: Sandra Holland. Accordingly, the Bank proceeded to depose Sandra Holland. At her deposition taken on June 22, 1976, Ms. Holland admitted that she had no recollection of ever applying for a job at the Bank in Suffolk in May, 1969. Neither the Bank nor the EEOC has any record that Ms. Holland filed an application in Suffolk in 1969. Asked to produce other records relevant to her charge, Ms. Holland claimed that she had records but, "They were thrown away so long—I don't know where they are." (App. 11).

None of the Bank's employees responsible for hiring at the time Ms. Holland allegedly applied has any recollection of Ms. Holland or her alleged application for employment.

None of these officials is currently employed by the Bank and one retired in 1969 and is presently seventy-four years of age.

On July 29, 1976, and after pre-trial discovery had been completed, the Bank filed its Motion for Summary Judgment. On July 30, 1976, the Bank filed a Motion to Compel the EEOC to supplement its answers to interrogatories concerning the identity of other alleged victims of discrimination. On August 11, 1976, the EEOC listed the names of about forty-seven individuals who it claimed allegedly were denied jobs because of their race. None of these forty-seven individuals had ever filed a charge of discrimination against the Bank and *all* such charges would have been time-barred by the 180-day Statute of Limitations set forth in Title VII.[1]

On August 31, 1976, the District Court entered summary judgment for the Bank. The District Court found that the almost seven years delay was "extraordinary" and that the Bank had, in fact been substantially prejudiced by this delay. (App. 9, 10-12). The District Court further found that the EEOC's only "explanation" for the delay, its heavy workload, did not excuse a delay of six and one-half years. (App. 8-10). The District Court further stated that because of the passage of time, destruction of relevant records and the fading of memories, "The defendant is now denied its right to cross-examine its accuser as she no longer has any remembrance of any important aspect of this material issue." (App. 12).

On April 18, 1978, the Fourth Circuit agreed that as to Holland, the only person who had ever filed a charge, the delay and prejudice may justify denial of relief as to her. (App. 19). The Fourth Circuit, nonetheless, reversed the

[1] 42 U.S.C. § 2000e-5(e)

District Court and said that the EEOC's suit was not only concerned with Ms. Holland's charge but also alleged "a pattern and practice of racial discrimination." (App. 18).[2] The Court of Appeals noted that during pre-trial discovery the EEOC claimed forty-seven persons had also been discrimnatorily denied employment and that dismissal prior to trial as to them was inappropriate. (App. 18-19).

VI.
REASONS FOR GRANTING THE WRIT
The Decision Below Raises Critical Questions As To Whether The EEOC Has Absolute Immunity From Time Limitations Or Equitable Defenses Prior To Trial

This case presents the important question as to whether the EEOC can delay indefinitely (six and one-half years) the commencement of an action under § 706(f) of Title VII, 42 U.S.C. § 2000e-5(f), where the delay admittedly resulted in substantial prejudice to the defendant and the pre-trial discovery materials demonstrate that the trial court is unable to conduct a trial based on evidence. If due process of law means anything, then courts should make findings of fact based on competent, reliable evidence—not self-serving speculation as to what might have occurred or been contained in records long ago destroyed. If the opinion below is allowed to stand, defendants in Title VII cases will be forced to go to trial on stale claims, the nature and magnitude of which were not identified until the eve of trial when it is impossible to ever reconstruct what actually took place. This will further impede the administration of justice and exacerbate the already serious problem of delay in the

[2] The "pattern and practice" section of the Act is § 707, 42 U.S.C. § 2000e-6. This action was not brought under that section but rather under § 706(f), 42 U.S.C. § 2000e-5(f).

federal judicial system—a delay which does not begin until after the suit is commenced.

The law ought not to condone delay such as took place in this case. If it does, then the EEOC could bring suits ten or twenty years after the events took place. This Court must set some limits short of infinity on the EEOC's right to sue on old charges. This case gives the Court an opportunity to set those limits.

In *Occidental Life Insurance Company* v. *EEOC,* 432 U.S. 355 (1977) this Court held that EEOC actions are not limited by any specific statute of limitations. But where the defendant is "significantly handicapped" by reason of "an inordinate EEOC delay," this Court said that federal courts can provide relief and have discretion to "locate a just result in light of the circumstances peculiar to the case . . ." 432 U.S. 373. *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405, 424-425 (1975). The holding of *Occidental* is premised on the prompt notice of the alleged violation which Title VII, as amended, *now requires.* § 706(b), (e), 42 U.S.C. § 2000e-5(b), (e) (Supp. V). 432 U.S. 371-373. The case at bar, however, is one of many cases brought by the EEOC based on charges which pre-date the 1972 amendments to Title VII. Here the Bank received no notice whatever of either the identity of the charging party or the nature of the alleged discrimination until over nine months after the charge was filed.[3] And all the Bank knew then was that one person (Sandra Holland) claimed race discrimination. Ms. Holland received notice in August of 1974 that she could sue but declined to do so. In January of 1976, almost

[3] Under the Act, as amended in 1972, the EEOC must give the respondent notice within 10 days of a charge being filed. This notice must include the date, place and circumstances of the alleged violation. 42 U.S.C. § 2000e-5(b).

a year and a half later, the EEOC brought this action. Not until August of 1976, over *seven* years after the charge was filed, did the Bank have notice of all the other claims that were allegedly at issue.

The lower courts have been forced to resolve the problem of whether the EEOC is completely immune from any time restraints or equitable considerations.[4] In *Occidental, supra,* this Court specifically recognized that relief may be appropriate from unreasonable EEOC delay. This Court's standard appears to resemble the equitable doctrine of laches. Some lower courts have held, as the District Court did here, that dismissal of the EEOC's suit may be an appropriate remedy under the circumstances. *EEOC* v. *Atlanta Big Boy Management, Inc., supra,* note 4; *EEOC* v. *Moore Group, Inc., supra,* note 4; *EEOC* v. *Bell Helicopter Co., supra,* note 4; *EEOC* v. *J. C. Penney Co., supra,* note 4; *EEOC* v. *C&D Sportswear Corp., supra,* note 4. This may be so even when the EEOC makes "class" allegations in its complaint. *EEOC* v. *Atlanta Big Boy Management, Inc.,*

[4] The following cases, to date, have addressed the problem. *EEOC* v. *The Chesapeake and Ohio Ry. Co.,* 13 FEP Cases 792 (E.D.Va. 1976), *aff'd & rev'd in part,* No. 76-1900 and 76-2442 (4th Cir. May 24, 1978); *EEOC* v. *South Carolina National Bank,* 562 F. 2d. 329 (4th Cir. 1977); *EEOC* v. *North Hills Passavant Hospital,* 544 F. 2d 664 (3rd Cir. 1976); *EEOC* v. *Exchange Security Bank,* 529 F. 2d 1214 (5th Cir. 1976); *EEOC* v. *Griffin Wheel Co.,* 511 F. 2d 456 (5th Cir. 1975), *aff'd on rehearing,* 521 F. 2d 223 (5th Cir. 1975); *Chromcraft Corp.* v. *EEOC,* 465 F. 2d 745 (5th Cir. 1972); *EEOC* v. *Atlanta Big Boy Management, Inc.,* 17 FEP Cases 344 (N.D. Ga. 1978); *Richardson* v. *Delta Drayage Co.,* 433 F Supp. 50 (E.D. La. 1977). *EEOC* v. *Nicholson File Co.,* 408 F. Supp. 229 (D. Conn. 1976); *EEOC* v. *Metro Atlanta Girls Club,* 416 F. Supp. 1006 (N.D. Ga. 1976); *EEOC* v. *Moore Group, Inc.,* 416 F. Supp. 1002 (N.D. Ga. 1976); *EEOC* v. *Bell Helicopter Co.,* 426 F. Supp. 785 (N.D. Tex. 1976); *Askins* v. *Imperial Reading Corp.,* 420 F. Supp. 413 (W.D. Va. 1976); *EEOC* v. *J. C. Penney Co.,* 12 FEP Cases 640 (N.D. Ala. 1975); *EEOC* v. *C & D Sportswear Corp.,* 398 F. Supp. 300 (M.D. Ga. 1975).

supra, note 4; *EEOC* v. *Bell Helicopter Co., supra,* note 4; *EEOC* v. *J. C. Penney Co., supra,* note 4.

The decision below held that although the charging party's claim may be barred, other claims, raised seven years later by the EEOC and which were never the basis of timely charges, were not barred. Thus, this case squarely presents the question of what relief a District Court can provide where EEOC delay prejudices the defendant. Expensive litigation[5] involving this issue is proliferating in the lower courts and guidance from this Court is necessary to clarify the conflicting notions.

This Court[6] and lower Courts[7] have been very understanding of the burdens imposed on the EEOC by its large caseload. However, when the charging party voluntarily declined to sue in August of 1974 and threw away her records, the EEOC ought to have directed its limited resources to more pressing claims. This is particularly true here for even two months *after* it brought suit, the only alleged discriminatee identified by the EEOC was Ms. Holland, a claim that Holland herself had long ago abandoned.

The EEOC brought this action under § 706(f)(1) of the Act, 42 U.S.C. § 2000e-5(f)(1). Contrary to the assertion of the Fourth Circuit, this was *not* a "pattern and practice" action since those actions are brought by a totally different procedure as provided by § 707 of Title, VII, 42 U.S.C. § 2000e-6. *See Teamsters* v. *United States,* 431 U.S. 324 (1977). Neither was this case certified as a class action. *EEOC* v. *D. H. Holmes Co.,* 556 F.2d 787 (5th Cir. 1977),

[5] See note 4.

[6] *Occidental Life Insurance Co.* v. *EEOC,* 432 U.S. 355 (1977).

[7] *EEOC* v. *Exchange Security Bank,* 529 F.2d 1214 (5th Cir. 1976; *EEOC* v. *Cleveland Mills Co.,* 502 F.2d 153 (4th Cir. 1974), *cert. denied* 420 U.S. 946 (1975); *Chromcraft Corp.* v. *EEOC,* 465 F.2d 745 (5th Cir. 1972).

petition for cert. filed (U.S. April 4, 1978) (No. 77-1415). Congress specifically provided two distinct enforcement provisions for Title VII. Section 706 allows the EEOC to bring an action in the federal district court on behalf of persons "aggrieved." Section 707 authorizes the EEOC to bring "pattern and practice" cases. The latter cases are primarily concerned with "class relief." *See Teamsters* v. *United States, supra,* 52 L.Ed. 2d at 415-416. By confusing this case brought under §706 with those under § 707, the decision below misinterprets the fundamental statutory framework.

The legislative history of § 706 and §707 demonstrates this distinction. Congress was aware that § 706, as it existed in the 1964 Act, had been used by aggrieved parties to bring class actions on behalf of themselves and similarly situated persons.[8] Congress specifically stated ". . . it is not intended that any of the provisions contained therein are designed to affect the present use of class action lawsuits under Title VII in conjunction with Rule 23 of the Federal Rules of Civil Procedure." Leg. Hist. p. 1773. Rule 23 specifically limits the rights of class members to the standing of the class representative, i.e., Ms. Holland. *East Texas Motor Freight* v. *Rodriguez,* 431 U.S. 395 (1977); *EEOC* v. *Datapoint Corporation,* 17 FEP cases 281 (5th Cir., 1978); *EEOC* v. *D. H. Holmes Co.,* 556 F.2d 787 (5th Cir. 1977), *petition for cert. filed* (U.S. April 4, 1978) (No. 77-1415). The attempt by the EEOC to "bootstrap" the untimely claims of non-charging parties without complying with Rule 23 can-

[8] Committee Print, Legislative History of the Equal Employment Opportunity Act of 1972, Senate Subcommittee on Labor of the Committee on Labor and Public Welfare, 2d Sess. (1972) at 1773 (hereinafter "1972 Leg. Hist.")

not be allowed. If the lower Court's decision is allowed to stand it will be tantamount to permitting a Court of Appeals to certify a class action in the first instance. This practice was n[illegible] looked upon with favor by this Court in the *Rodriguez* case, *supra*.

The Decision Below Permits The EEOC To Rely On A Charge The Validity Of Which Cannot Possibly Be Demonstrated.

Not only has the Commission's delay irreparably prejudiced the Bank's ability to defend the lawsuit but it has also resulted in the Commission's inability to establish basic jurisdictional facts. Section 706(b) of Title VII provides that "a person claiming to be aggrieved" must initiate EEOC proceedings by filing a charge. 42 U.S.C. § 2000e-5(b) The timely filing of a charge is a prerequisite to the maintenance of a Title VII action. *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792 (1973); *United Airlines* v. *Evans,* 431 U.S. 553 (1977). These decisions and the language of the statute itself demonstrate that for jurisdiction to be conferred upon the federal courts there must be a timely charge filed by a person aggrieved.

In determining whether a plaintiff has standing as a person aggrieved to assert rights under a federal regulatory statute, the plaintiff must be injured in fact by the alleged violation and must be arguably within the zone of interests to be protected by the statute. *Data Processing Service* v. *Camp,* 397 U.S. 150 (1970); *Barlow* v. *Collins,* 397 U.S. 159 (1970). The party seeking review must allege facts showing that he is himself adversely affected. *Sierra Club* v. *Morton,* 405 U.S. 727 (1972). No broader reading may be given to the definition of 'person aggrieved' in Title VII. If the claimant lacks standing to raise a claim, no case or controversy under Article III is presented for decision. *Flast*

v. *Cohen,* 392 U.S. 83, 92 (1968). Title VII cannot be broader than Article III of the Constitution.

A number of federal courts have applied the "injury in fact" standard to Title VII actions by individual charging parties. *Hackett* v. *McGuire Brothers, Inc.,* 445 F.2d 442 (3rd Cir. 1971); *Ripp* v. *Dobbs Houses, Inc.,* 366 F.Supp. 205 (N.D. Ala. 1973); *Foust* v. *Foremost-McKesson, Inc.,* 10 FEP Cases 322 (N.D. Calif. 1975). The requirement that the charging party initiating Commission proceedings be injured in fact has also been applied where the Commission has sought to subpoena records based upon an invalid charge, *EEOC* v. *Quick-Shop Markets,* 10 FEP Cases 1081 (E.D. Mo. 1975), or to bring an enforcement action in federal court. *EEOC* v. *National Mine Service Co.,* 8 FEP Cases 1233 (E.D. Ky. 1974); *EEOC* v. *Beaver Gasoline Co.,* 14 FEP Cases 1343 (W.D. Pa. 1977).

The EEOC has adopted the same limitations on its own jurisdiction.

> "To establish standing as an aggrieved person within the meaning of Title VII, a charging party must allege, and later show, that he or she has been injured in fact."

EEOC Dec. 75-006, 11 FEP Cases 1498 (July 30, 1974).

In this § 706 action, the EEOC is suing on behalf of the charging party, Sandra Holland. Its authority to bring suit is derivative from her charge and is completely dependent upon it for jurisdictional purposes. Based on Ms. Holland's own testimony, taken more than seven years after the events took place, she cannot claim to be a person aggrieved. (App. 11). Even assuming that she ever applied for a position with the Bank and was rejected, the timeliness of her charge cannot be proved. Given these jurisdictional deficiencies which were caused by the extraordinary delay in this case,

Ms. Holland could not pursue a Title VII suit in her own right and neither can the EEOC.

The Commission cannot create jurisdiction under § 706 simply by bringing suit in its own name where there would be no jurisdiction to entertain a suit brought by the charging party.[10] If the validity and timeliness of the charge upon which suit is predicated cannot be shown, then neither the EEOC's acceptance of a charge nor attempted expansion of its suit to include other claimants can substitute for the absence of jurisdiction.

If the EEOC or Ms. Holland could ever have demonstrated that she in fact was aggrieved and filed a timely charge, it is evident that neither can do so now. Yet it is a fundamental principle of federal jurisdiction that the plaintiff is to allege jurisdictional facts in his pleading and to carry the burden of showing that he is properly in court. *McNutt* v. *General Motors Acceptance Corporation*, 298 U.S. 178 (1936). If the plaintiff's allegations of jurisdiction are challenged, he must support them by competent proof. The EEOC cannot do that in this case. *McNutt* v. *General*

[10] While there have been a number of appellate decisions holding that the scope of an EEOC complaint is not limited by the standing of the charging party, they are fundamentally distinguishable from the factual situation presented in this case. See, *EEOC* v. *General Electric Co.*, 532 F.2d 359 (4th Cir. 1976); *Bluebell Botts, Inc.* v. *EEOC*, 418 F.2d 355 (6th Cir. 1969); *EEOC* v. *Occidental Life Insurance Co.*, 535 F.2d 533 (9th Cir. 1976), *rev'd on other grounds*, 432 U.S. 355 (1977). In each of these cases there was a valid charge initiating the administrative process. During the investigation, other forms of alleged discrimination which the charging parties would not have had standing to raise were considered by the Commission and later included in a judicial complaint. These cases therefore focused upon the scope of an EEOC investigation and complaint once a valid charge was filed. In contrast, the issue here is whether the EEOC can sue at all when the validity of the charge, and therefore the jurisdictional prerequisites to suit, cannot be proven.

Motors Acceptance Corp., id.; Birmingham Post Co. v. *Brown*, 217 F.2d 127 (5th Cir. 1954); *Mas* v. *Perry*, 489 F.2d 1396 (5th Cir. 1974), *cert. denied* 419 U.S. 842 (1974).

The district court properly dismissed the case because its jurisdiction could not be established by virtue of the laches of the EEOC.

CONCLUSION

For these reasons, a Writ of Certiorari should be issued to review the judgment and opinion of the Fourth Circuit.

Respectfully submitted,

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June 16, 1978

CERTIFICATE OF SERVICE

I, Paul M. Thompson, Counsel for the Petitioner, and a member of the Bar of the Supreme Court of the United States, hereby certify that I have served all parties required to be served by depositing three copies of the foregoing Petition for Writ of Certiorari in the United States Mail, first class postage prepaid, this 16th day of June, 1978, addressed to: The Solicitor General of the United States, Department of Justice, Washington, D.C. 20530; Abner W. Sibal, Esq., General Counsel and William H. Ng, Esq., 2401 E Street N.W., Washington, D.C. 20560; Douglas S. Attorney, Equal Employment Opportunity Commission,

McDowell, Esq., Equal Employment Advisory Council, Suite 1250, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006; Hon. William K. Slate II, Clerk, United States Court of Appeals for the Fourth Circuit, Richmond, Virginia 23219.

PAUL M. THOMPSON
Counsel for Petitioner

APPENDIX A

Opinion of the United States District Court for the Eastern District of Virginia

In The

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Norfolk Division

Equal Employment Opportunity Commission, Plaintiff,	
v.	Civil Action No. 76-26-N
American National Bank, Defendant.	

MEMORANDUM OPINION AND ORDER

This is an action brought pursuant to 42 U.S.C. § 2000e, et seq., commonly referred to as Title VII of the Civil Rights Act of 1964, as amended, by the Equal Employment Opportunity Commission [hereinafter referred to as "EEOC"] claiming that the Suffolk Branch of the American National Bank has been since May, 1969 and is now guilty of discriminatory employment practices. The Complaint seeks equitable relief in the form of an injunction against further discrimination, the requirement that defendant institute an affirmative action program, and back pay for those discriminated against.

The matter comes before the Court on the defendant's Motion for Summary Judgment based on two grounds. First, the EEOC cannot establish that the charging party, Sandra Holland, ever filed an application for employment

with the Suffolk Branch of the American National Bank, and second, the affirmative defense of laches based on the presence of unreasonable delay and resulting prejudice.

Facts

A review of the Complaint, Answers to Interrogatories, documents submitted pursuant to motions to produce and depositions heretofore taken, establish the following uncontradicted facts:

1. The action is based on a charge filed with the EEOC by Sandra Holland in which Mrs. Holland claims to have filed an application for employment with the Suffolk Branch of the American National Bank in May, 1969 and that she was not hired because she was black.

2. EEOC undertook to investigate the charge.

3. It was not until May 11, 1974, that the EEOC made a "Determination" based on the charge.

4. Conciliation was unsuccessfully attempted after the determination of May 11, 1974.

5. On August 22, 1974, EEOC issued a "Right-to-Sue" letter to Mrs. Holland.

6. Mrs. Holland did not file suit following receipt of the "Right-to-Sue" letter from EEOC.

7. On January 21, 1976, six and one-half years after the initial charge, the EEOC filed this action based upon the Holland charge.

8. Plaintiff's answer to first interrogatories clearly shows that as of the time of filing this suit the sole individual claiming to be aggrieved by American National Bank's

Suffolk Branch's alleged discriminatory practices was Sandra Holland, and that the charge of discrimination relied upon in bringing the suit was dated June 19, 1969.

Applicability of Affirmative Defense

Although it is clear, in this Circuit at least, that the EEOC is not bound by any strict statutory time limits in bringing its actions, either state or federal,[1] nonetheless, a limitation on EEOC enforcement powers may be found in traditional notions of equity and the Administrative Procedure Act, 5 U.S.C. §706(1).[2] There are many cases which state as a general principle that the doctrine of laches may not be imputed against the Government to bar its actions in court. See, for example, *United States* v. *Summerlin,* 310 U.S. 414 (1940); *Chromcraft Corp.* v. *EEOC,* 465 F.2d 745, 746, n.2 (5th Cir. 1972). (The latter case, while denying the applicability of laches as such, did note the applicability of the Administrative Procedure Act as an equitable limitation.) On the other hand, it is clear that the Government is not universally immune from claims of delay and resulting prejudice. See *Clearfield Trust Co.* v. *United States,* 318 U.S. 363 (1943), a commercial case which ruled that a Federal standard ap-

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[1] See *EEOC* v. *Cleveland Mills Co.,* 502 F.2d 153 (4th Cir. 1974), *cert. denied* 420 U.S. 946 (1975).

[2] 5 U.S.C. § 706 provides, in part:

> "To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—
>
> "(1) compel agency action unlawfully withheld or unreasonably delayed; and
>
> "(2) hold unlawful and set aside agency action, findings, and conclusions found to be—
>
> "(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;"

plied to determine whether delay was unreasonable and prejudicial and assumed that the sovereignty of the Government did not shield it from such defenses. "The fact that the drawee is the United States and the laches those of its employees are not material." [citation omitted] *Id.* at 369. As a general proposition, then, the question of the applicability of laches against the Government is not "well settled." [3]

In order to file suit against employers or others to vindicate this public interest, the EEOC must have a charge filed with it by an alleged victim of discrimination or by a member of the Commission. (42 U.S.C. 2000e-5) The charge is the starting point for investigation and may lead to allegations of widespread discrimination by the party being investigated. However, it is notice of the initial charge which is given to the employer and on which the EEOC must rely as a "ticket" into court. *Sanchez* v. *Standard Brands, Inc.*, 431 F.2d 455 (5th Cir. 1970). This restriction shows that the EEOC may not rely solely on theoretical adherence to its laudable purpose, but rather must be presented with actual controversies and allegations. Even if continuing, broad-based discrimination is alleged, the EEOC is limited in proceedings by the existence of specific charges, even though the relief available and even the types of discrimination alleged go beyond what the charging party may have claimed.[4]

[3] Despite frequent dictum to the contrary, see *United States* v. *Summerlin*, 310 U.S. 414 (1940), the question still depends on the facts and circumstances of each case.

[4] The Court is mindful of the recent statement by the Fourth Circuit:

> "But, unlike the individual charging party, the EEOC, when it sued, did so 'to vindicate the public interest' as expressed in the Congressional purpose of eliminating employment discrimination as a national evil rather than for the redress of the strictly private interests of the complaining party. Because of this significant difference, the EEOC's suit was 'broader [in scope] than the interests of the charging parties.' It follows that the standing of the EEOC to sue under Title VII cannot be controlled or determined by the standing of the charging party to sue, limited as he is in rights to the vindication of his own individual rights. To hold otherwise, as did the District Court, would be to continue treating the sole purpose of the Title to be the correction of individual wrongs rather than of public or 'societal' wrongs as well as to deny to the EEOC the right to be any more than a mere proxy for the charging party rather than what Congress by the Amendments of 1972 intended, i.e., the public avenger by civil suit of any discrimination uncovered in a valid investigation and subjected to conciliation under the Act."

EEOC v. *General Electric Co.*, 532 F.2d 359 (1976) [footnotes omitted]

Fundamental fairness should require reasonably prompt action by the Government when seeking to impose substantial penalties on parties charged with discrimination. Unconscionable delay in proceedings under Title VII not only disserves the policy of ending discrimination while leaving the alleged victim of discrimination without relief,[5] but also the parties charged are left in the Damoclean situation of never knowing when an old charge may spring back into life as the basis of a lawsuit against it. The proper functioning of administrative agencies and the proper relationship between a government and its citizens, individual and corporate, should not allow the unending possibility of litigation on forgotten matters.

Fortunately, the legal system is not powerless to deal with such problems. The precise question of the applicability of laches and 5 U.S.C. § 706(1) against the EEOC has been considered by several other district courts.

Acting under somewhat confusing guidance from the Fifth Circuit, Chief Judge Edenfield in a pair of unrelated cases

[5] The instant case is an example where the delay has continued for such a duration that the original charging party can no longer remember even applying for a job with the defendant at the time charged. (Holland deposition, pp. 12, 13, 14 & 15) She also has obviously, over the years, lost whatever personal stake or interest she may have had in the case.

finally declined, because of inadequate authority from the Fifth Circuit,[6] to hold that laches was applicable against the Government but did rule that a court, using 5 U.S.C. § 706(1), could achieve the same result, namely bar an agency from proceeding when its unreasonable delay has prejudiced the defendant. *EEOC* v. *Moore Group, Inc.,* 12 FEP 1758 (N.D. Ga. June 30, 1976); *EEOC* v. *Metro Atlanta Girls' Club,* 12 FEP Cases 1760 (N.D. Ga. June 30, 1976).

In those cases, Judge Edenfield discussed the notations from the Fifth Circuit regarding limitation on EEOC enforcement power. In his first order in the *Moore Group* case, 11 EPD ¶10, 886 (March 25, 1976), he cited *United States* v. *Georgia Power Co.,* 474 F.2d 906 (5th Cir. 1973) and *EEOC* v. *Griffin Wheel,* 511 F.2d 456, which apparently endorsed application of the doctrine of laches. In *EEOC* v. *Exchange Security Bank,* 12 FEP Cases 1066 (April 8, 1976), the Fifth Circuit failed to mention the doctrine of laches while considering the question of delayed enforcement. In doing so, however, as noted in *Moore Group, supra,* the court made clear that unreasonable delay, if proved, which results in prejudice, if proved, would constitute a defense under 5 U.S.C. § 706(1). This was the doctrine applied by Chief Judge Edenfield. In *Moore Group,* the factors of unreasonable delay and prejudice were found; in *Atlanta Girls' Club,* they were not. Thus, application of an equitable limitation has been endorsed by the Fifth Circuit, whether identified as laches or 5 U.S.C. § 706(1).

Two earlier cases applied laches against the EEOC and barred suit. *EEOC* v. *C & D Sportswear Corp.,* 398 F. Supp.

[6] The Fifth Circuit, in a footnote, did express approval of the application of laches: "[T]he doctrine of laches would remain applicable." *EEOC* v. *Griffin Wheel Co.,* 511 F.2d 456, 459 n.5 (1975). However, Judge Edenfield considered this dictum and, under the circumstances, ambiguous.

300 (M.D. Ga. 1975) and *EEOC* v. *J. C. Penney Co.,* 12 FEP Cases 640 (N.D. Ala. December 16, 1975). In the *C & D* case, the Court noted the passage of six years and the advanced age of a key defense witness and found unreasonable delay resulting in prejudice to the defendant. In the *Penney* case, the court applied the doctrine and found laches based on delays far shorter than in the instant case.

In *EEOC* v. *Nicholson File Co.,* 12 FEP Cases 1405 (D. Conn. January 19, 1976), the court recognized the availability of "[a]n equitable defense, in the nature of laches," the elements of which could be demonstrated at trial.

Thus, there is ample authority for the proposition that an administrative agency such as the EEOC, even in the absence of specific statutory time limits, may not postpone enforcement indefinitely without excuse to prejudice of the defendant. As Judge Edenfield put it in his first decision in *Moore Group:*

> "The EEOC indeed has a duty to vindicate the important public rights secured to all citizens under Title VII; it may not, however, do so in a manner which rides roughshod over the rights of private parties and the notions of fairness and due process as well. If this defendant is indeed engaging in discriminatory employment practices, the victims thereof are free to file fresher charges with the EEOC. The Commission shall not be allowed to proceed further on the inexcusably stale charges herein." 11 EPD Cases 7740.

Imposition of this equitable limitation, whether under the theory of laches or under authority of 5 U.S.C. § 706(1), should not hamper the legitimate functioning of the agency. It is still free to investigate fully any other charge that may be made. No adverse impact on EEOC conciliation process should result because dilatory bargaining by a defendant which increases the passage of time will not aid in establishment of this defense. The agency will merely be required

to act with greater dispatch in those cases where the defendant is likely to be harmed by inexplicable delay.

Elements of the Defense

As alluded to above, the elements of the affirmative defense, here denominated as "in the nature of laches," (regardless of its source in general equity or the Administrative Procedure Act) are: (1) unreasonable or unexplained delay in bringing proceedings and (2) resulting prejudice to the defendant. See *EEOC* v. *Moore Group, Inc.*, 12 FEP Cases 1758, 1759 (N.D. Ga. June 30, 1976); see also, *Gardner* v. *Panama R. Co.*, 342 U.S. 29 (1951); *EEOC* v. *Exchange Security Bank*, 12 FEP Cases 1066 (5th Cir. April 8, 1976).

Determining the existence of these elements requires analysis of the facts presented, and it is to this the Court now turns.

Inexcusable Delay

The only explanation made by the EEOC for the almost seven-year delay in this case was that the workload of the EEOC is heavy. In considering and rejecting the application of a 180-day limitation on actions by the EEOC, the Fourth Circuit noted the EEOC's backlog and stated:

> "These conditions make it highly unlikely that the Congress would have considered the imposition of narrow and precise time limits upon the Commission's right to file an action for judicial enforcement." *EEOC* v. *Cleveland Mills Co.*, 502 F.2d 153 (4th Cir. 1974).

Release from inflexible time restraints, however, is not authorization for investigations of indefinite duration or limitless postponement of initiation of suit following the failure of conciliation.

The facts of this case clearly show an investigation which was not started until nine months after the charge was filed

(See Area Director's Findings of Fact, December 30, 1970) and which endured for four years more before the making of a reasonable cause determination. (See Determination of Treadwell O. Phillips, March 11, 1974.) In addition, a seventeen-month period elapsed following the failure of conciliation and the issuance of the "Right-to-Sue" letter before suit was filed. No excuse for such extraordinary delays has been offered by the EEOC, other than its workload. (See EEOC Memorandum at P. 5) This is not an especially involved case which might justify a lengthy investigation. Indeed, the EEOC asserted, in answer to defendant's interrogatories that "[t]he identity of all other persons who were unlawfully denied equal opportunity in employment by Defendant [would be] subject to ascertainment during discovery proceedings." (Plaintiff's answer to defendant's first set of interrogatories, No. 13). In other words, the nearly seven years of formal investigation and trial preparation by the EEOC failed to identify a single additional particular victim of discrimination. Thus, the time required for such investigative activities was not required by the complexty of the case. Absent special circumstances, the mere existence of a burdensome workload does not justify delays of the magnitude present in this case.[7] It is worth noting

[7] The other cases which have barred EEOC action because of unreasonable and prejudicial delay involved time periods shorter than the instant case note the comparison:

Case	*Time from charge to reasonable cause determination*	*Time from failure of conciliation to suit*	*Total Time (including attempted conciliation)*
C & D Sportswear Corp.	2¾ yrs.	2½ yrs.	5½ yrs.
J. C. Penney Co.	1½ yrs.	2 yrs.	4 yrs.
Moore Group, Inc.	2¾ yrs.	1½ yrs.	5 yrs.
American National Bank	4¾ yrs.	1½ yrs.	6½ yrs.

again that the policy of seeking non-judicially enforced compliance through the statutorily required conciliation procedure is not jeopardized because any delay caused by the employer's lack of cooperation in not unreasonable or unexplained.

Accordingly, this Court deems the delay in this case to be unexplained and inexcusable, satisfying the first factor of the affirmative defense.

Prejudice to Defendant

The mere passage of time is insufficient to establish a defense in this case. The defendant must also show prejudice to its defense as a result of the unreasonable delay.

The District Court in *EEOC* v. *C & D Sportswear Corp.*, 398 F. Supp. 300 (M.D. Ga. 1975), pointed out that a witness whose testimony would play a role in the trial of the cause was seventy years of age at the time of the taking of his deposition three years prior to the trial of the case. In that case, the Court stated "It is entirely likely that the elder Dinnerman's recollection of events which occurred 6 years prior to any testimony would not be entirely reliable. Indeed, no one's memory would be entirely reliable." In the case before this Court, it appears that testimony vital to the defendant's case would have to be given by Mr. E. T. Jakeman, who was sixty-six years of age in 1969 and who is now 72 years of age. Neither Mr. Jakeman nor two other witnesses of importance to the defense are currently employed by American National Bank. Mr. Jakeman retired in 1970 and the other two gentlemen left the Bank in 1973 and early 1975, respectively.

Note also that the delay sustained by the Fourth Circuit in *Cleveland Mills Co.* involved "only" a three-year investigation and suit was filed only about three months following the failure of conciliation, time periods substantially shorter than the case at bar.

The prejudice to the defendant in this case is further borne out by the actual evidence of Sandra Holland and E. T. Jakeman. Mrs. Holland now states in her deposition that she is unable to produce any records pertaining to any charge that she may have filed against American National Bank because she had thrown them away "a long time ago" (Holland Dep. p. 5); that she applied to many banks (Holland Dep. p. 5, 10, 12, 15, 22, 52, 54); that she was mixed up on the dates of her application filings (Holland Dep. p. 10); that she cannot remember whether she filled out the application at the bank and filed it at that time or whether she took the application home and filled it out and later mailed it in (Holland Dep. pp. 11, 12); that she doesn't know who she talked to at the Bank (Holland Dep. p. 17); that she doesn't remember where she signed the complaint or charge which is the basis of this action or who was present when she signed it (Holland Dep. pp. 19, 20, 21). She also indicated that she had moved from Suffolk to Portsmouth, Virginia, in May or June, 1969 (Holland Dep. p. 32). Most importantly, she now does not remember if she filed an application with the Suffolk Branch of American National Bank in May of 1969 (Holland Dep. pp. 12, 13, 14, 15).

The affidavit of Mr. E. T. Jakeman, who is now retired, but who was manager of the Suffolk Branch of American National Bank in May, 1969, states that no May, 1969 application for employment by Sandra Holland was found in the Bank's records; an October, 1969 application was found (This, however, was shown by other evidence to have been filed at the Portsmouth office for a job in Portsmouth and plays no part in the Holland charge which is the basis of this action.); he remembers two Negro girls coming into his office sometime in 1969, only one of which wanted to

apply for a job; the lady wanting to apply had worked at B. D. Laderberg's, a place where Sandra Holland had worked; an application blank was given to the Negro lady and she was told she could fill it out at the Bank and leave it or she could take it home and fill it out and mail it in. Mr. Jakeman has no recollection of receiving the application in the mail.

The defendant hotly contests the allegation that the complainant ever filed the application for employment which was the basis for her charge and, in turn, the basis for the EEOC action against the defendant. From the foregoing excerpts from the record, it can be seen that there is a genuine issue of fact as to whether the application for employment was ever filed or, even if the application blank was ever secured.

The records of Mrs. Holland might well have shown what banks she filed with and have shown that she did not file with American National Bank, Suffolk Branch. Neither Jakeman nor Holland can be expected seven years after the alleged interview to be able to identify the other or exclude the other as the person talked to. The defendant is now denied its right to cross-examine its accuser as she no longer has any remembrance of any important aspect of this material issue.

This Court, therefore, is of the opinion that the uncontradicted facts established in this case constitute sufficient prejudice to the defendant to satisfy the requirement of the affirmative defense in the nature of laches. Accordingly, by reason of the foregoing and on the basis of the authorities cited, defendant's motion for summary judgment because of unreasonable delay resulting in prejudice by the plaintiff EEOC is hereby GRANTED.

The Court having found that a defense in the nature

of laches applies, it is unnecessary to pass on the other ground urged by the defendant for dismissal, that is, that the EEOC is not able to prove that its charging party, Sandra Holland, ever actually filed an application with the Suffolk Branch of the American National Bank at the time charged.

The Court, in dismissing this action on the ground of laches or under authority of 5 U.S.C. § 706(1), is not harming Mrs. Holland as she voluntarily chose not to bring an action herself when she was advised that she could do so in 1974. Furthermore, if any other person determines to file a charge against the American National Bank, the EEOC would not be precluded from bringing an action on the basis of that new complaint. Therefore, if the EEOC's allegations are correct and American National Bank, Suffolk Branch, is guilty of discriminatory conduct, such conduct is subject to legal remedy.

The requirement, imposed here, of a fresher charge on which to base a complaint is more than an idle technicality. While this requirement does not interfere with vindication of the public interest in cases of continuing discrimination, it assures a defendant that there is some end to the possibility of litigation over ancient charges. Fundamental fairness requires no less.

The motion for summary judgment is GRANTED and this action is DISMISSED, with prejudice.

s/ J. Calvitt Clarke

United States District Judge

August 31, 1976
Norfolk, Virginia

APPENDIX B

Opinion of the United States Court of Appeals for the Fourth Circuit

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 76-2452

Equal Employment Opportunity Commission,

Appellant,

v.

Appellee.

American National Bank,

Equal Employment Advisory Council,

Amicus Curiae.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. J. Calvitt Clarke, Jr., District Judge.

Argued February 7, 1978 Decided April 18, 1978

Before WINTER, BUTZNER AND RUSSELL, *Circuit Judges.*

William H. Ng, Attorney, Equal Employment Opportunity Commission (Abner W. Sibal, General Counsel, Joseph T. Eddins, Associate General Counsel, Beatrice Rosenberg, Assistant General Counsel, Equal Employment Opportunity Commission on brief) for appellant; Paul M. Thompson (Jack W. Burtch, Jr., Hunton and Williams on brief) for appellee; (Avrum M. Goldberg and Marc E. Lackritz; Robert E. Nagle, Wald, Harkrader & Ross; Robert E. Williams and Douglas S. McDowell, McGuiness & Williams on brief) for amicus curiae, Equal Employment Advisory Council.

BUTZNER, Circuit Judge:

The Equal Employment Opportunity Commission brought this suit alleging that since May, 1969, American National Bank has engaged in a pattern and practice of racial discrimination against blacks in violation of § 703 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2. On the bank's motion for summary judgment, the district court dismissed the action because of unreasonable delay prejudicing the bank.* Relying largely on Occidental Life Ins. Co. v. EEOC, 432 U.S. 355 (1977), which was decided after the district court acted, we vacate the order of dismissal and remand the case for further proceedings.

I

Sandra Holland filed a charge with the commission in June, 1969, alleging that she had applied for employment at the Suffolk, Virginia, branch of American National Bank a month earlier and that the bank did not hire her because she is black. The commission did not complete its investigation or determine whether there was reasonable cause for believing the charge, as required by 42 U.S.C. § 2000e-5(b), until March, 1974. In its notice to the bank of its determination of reasonable cause, the commission reported that its investigation disclosed that most of the bank's black employees held menial jobs; that the proportion of white persons employed as tellers and clerks greatly exceeded the proportion of white people in the community; that the bank utilized tests for hiring which discriminated against blacks; that in the absence of business necessity it relied on adverse references without permitting applicants to explain or refute them; and that without showing any business necessity, it

* The district court's opinion is reported as EEOC v. American National Bank, 420 F.Supp. 181 (E.D. Va. 1976).

utilized credit status as an employment criterion notwithstanding its disproportionate impact on black applicants. In accordance with the statute, the commission attempted to conciliate these charges. After conciliation failed, the commission issued Holland a right to sue letter in August, 1974, but she elected not to proceed.

In January, 1976, nearly seven years after the charge had been filed, the commission brought this action pursuant to 42 U.S.C. § 2000e-5(f)(1). In its complaint it alleged a pattern and practice of discrimination specifying that the bank had a continuing policy of excluding black persons from employment, used pre-employment selection devices which exclude black applicants, and hired a disproportionately large number of black persons for menial jobs that deny them the opportunity for advancement open to white employees. During pre-trial discovery, the commission claimed 47 persons had been discriminatorily denied employment.

In a deposition taken in June of 1976, Holland testified that she applied for a job at the bank's Suffolk branch in 1965 and 1968, but she could not recall whether she applied there in 1969. She also said that she threw away her records "a long time ago." The manager of the Suffolk branch at the time of Holland's charge is now retired. He testified that the bank's records contain no May, 1969, application from Holland for the Suffolk branch, but that he found an October, 1969, application in which she applied for work at the Portsmouth branch. The bank preserved all of the applications for employment at Suffolk from 1969 to date.

The district court concluded that an affirmative defense in the nature of laches is available to defendants in actions brought by the commission pursuant to Title VII. It held that the elements of this defense are (1) unreasonable or unexplained delay in bringing proceedings and (2) resulting

prejudice to the defendant. It found that evidence had been lost and memories dimmed concerning Holland's initial charge, and it ruled that the commission's heavy workload offered no justification for the delay.

II

In Occidental Life Ins. Co. v. EEOC, 432 U.S. 355 (1977), the Supreme Court held that no federal statute of limitations applies to the filing of suits by the commission once jurisdiction over a complaint is properly obtained. 432 U.S. at 358-66. Noting that Congress was aware of the delays caused by a burdensome workload when it assigned additional duties to the commission in 1972, the Court concluded that Congress did not intend that state limitations statutes should be applied. 432 U.S. at 366-72. The Court recognized, however, that despite the protections afforded during the administrative phase of the proceedings, a potential defendant might be prejudiced by the commission's inordinate delay. In such cases, it observed, federal courts have ample power to limit the relief to which the commission is entitled. It stated:

> This Court has said that when a Title VII defendant is in fact prejudiced by a private plaintiff's unexcused conduct of a particular case, the trial court may restrict or even deny backpay relief. . . . The same discretionary power "to locate 'a just result' in light of the circumstances peculiar to the case," . . . can also be exercised when the EEOC is the plaintiff. 432 U.S. at 373.

These principles govern the case now before us.

As we have previously mentioned, the commission's suit was not concerned merely with the Holland charge; it alleged a pattern and practice of racial discrimination. The commission was entitled to bring suit on these broader allegations because they were founded on the reasonable cause determination and conciliation efforts. EEOC v. General Electric Co., 532 F.2d 359 (4th Cir. 1976). In contrast, the district court's finding of prejudice rested primarily on the lost evidence concerning Holland's initial charge. This loss may justify denial of relief to Holland, but it does not establish the bank's inability to defend the pattern and practice suit.

Applying *Occidental,* we conclude that the district court should not have dismissed the commission's suit. Whether the commission's delays caused prejudice that will justify a limitation of the relief which the district court should decree can best be considered after the facts have been fully developed, if the commission ultimately prevails. *Cf.* EEOC v. Airguide Corp., 539 F.2d 1038, 1042 n.7 (5th Cir. 1976); EEOC v. General Electric Co., 532 F.2d 359, 371-72 (4th Cir. 1976).

Accordingly, the order of dismissal is vacated, and the case is remanded for further proceedings consistent with this opinion.

APPENDIX C

42 U.S.C. §§ 2000e-5(b), 2000e-5(e), 2000e-5(f)(1), 2000e-6(a), 2000e-6(c), and 2000e-6(e).

42 U.S.C. § 2000e-5(b)

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, . . . has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, . . . (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof.

* * *

42 U.S.C. § 2000e-5(e)

A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter.

* * *

42 U.S.C. § 2000e-5(f)(1)

If within thirty days after a charge is filed with the Commission . . ., the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. . . . The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission . . . If a charge filed with the Commission pursuant to subsection (b) of this section, is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or

the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section . . ., or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission . . . shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. . . . Upon timely application, the court may, in its discretion, permit the Commission, . . . to intervene in such civil action upon certification that the case is of general public importance.

* * *

42 U.S.C. § 2000e-6(a)

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

42 U.S.C. § 2000e-6(c)

Effective two years after March 24, 1972, the functions of the Attorney General under this section shall be transferred to the Commission . . . The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

42 U.S.C. § 2000e-6(e)

Subsequent to March 24, 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e-5 of this title. (As amended Pub. L. 92-261, § 5, Mar. 24, 1972, 86 Stat. 107.)